

Community Dispute Resolution Program

Innovative Mediation Services in Michigan Trial Courts

April 2007

The following are services provided by Community Dispute Resolution Program (CDRP) centers. Not all services and projects are available at each center, however. Courts are encouraged to contact their local CDRP center to learn more about these services and to determine how new services can be initiated.

Circuit Court

General Civil

Pro se & Indigent Litigants

The free or low cost services offered through CDRP centers respond to State Bar of Michigan “access to justice” considerations in offering all litigants, including pro se and indigent litigants, access to dispute resolution processes.

Cases Evaluated Under \$25,000

A pilot project is currently assessing the effectiveness of mediating cases subsequent to a party’s rejection of a case evaluation award of less than \$25,000. Parties retain the right to select their own mediation service provider.

Family Division

Post-Judgment Domestic Relations Mediation

A pilot project supported by a DHS Access and Visitation Grant tests the use of mediation in post-judgment parenting time and custody disputes referred by the Friend of the Court.

Divorce Mediation

Another pilot project will test the use of mediation in helping pro se litigants who have no children, and who have few or no assets, derive a judgment of divorce for presentation to the court. This service is supported with a generous grant by the Michigan State Bar Foundation.

Personal Protection Order Mediation

The mediation of PPO matters typically involves instances where the court has denied a PPO for failing to meet statutory thresholds, but where there is nevertheless a

conflict between parties. Less frequently, but when mediation may resolve an underlying dispute, a PPO will contain a provision that permits parties to meet at a mediation center or at the court for the limited purpose of mediation.

Incorrigibility Mediation

Courts have offered mediation to parents and children with the goal of re-establishing communications and agreeing behaviors such that the matters brought to the court's attention in a petition are resolved.

Truancy Mediation

Several courts, in collaborations with local school districts, prosecutors' offices, and law enforcement agencies, are testing the use of mediation in truancy cases. The purpose of mediation is to derive a plan that parents and their children can adhere to that keeps the student in school.

Victim/Offender Mediation

Juvenile offenders meet with victims in a hybrid mediation process which permits the victim to share with the offender any feelings about the criminal act. "Victim-offender mediation" is frequently cited as a means to humanize the judicial response to a criminal act by having the offender meet with the juvenile to discuss the incident and to participate in restitution and community service discussions. Mediation may be offered either as a part of diversion or post-adjudication. In some counties, mediation of juvenile offender matters is a part of a local FIA-coordinated Balanced and Restorative Justice initiative. Mediation will soon be tested in adult offender cases, for example in embezzlement cases, to determine the level of restitution and repayment period.

Child Protection Mediation

A growing number of CDRP centers mediate child protection cases. These cases are referred by the court to mediation at a wide variety of points in the litigation process, including pre-adjudication, adjudication, disposition, review hearings, permanency planning hearings, termination, and adoption. The primary goal is to help children achieve permanent placements in a timely and safe manner. These mediations generally include parents and their attorneys, the lawyer guardian ad litem for the children, FIA and private agency case workers; they also sometimes include the prosecutor, foster parents, other relatives, service providers, court appointed special advocates, and even the children if the situation is appropriate.

An evaluation by the Michigan State University School of Social Work found that children whose cases were mediated achieved permanency outcomes 12.5 months sooner than children whose cases were traditionally managed. In over 80% of these cases an agreement is reached, which is then brought back to court for judicial approval.

Probate Court

Guardianship Mediation

The existence of “on-going relationships” is one of the fundamental indicators that a matter should be considered for mediation. Contested guardianship matters generally involve family members and close friends. In mediation, parties are able to talk through long-standing problems to provide a new focus on the immediate needs of the petitioned family member.

A key element to successfully convening a mediation session is to schedule the mediation from the bench to ensure that all persons attend.

Wills & Trusts

Akin to guardianship matters, will and trust disputes, commonly involving family members, are also amenable for resolution through mediation. Controversies frequently stem from prior unresolved family problems. In mediation, parties have an opportunity to work through issues and to find solutions everyone can accept.

District Court

Small Claims

Courthouse Mediation

On site mediation typically occurs on the date of the scheduled small claims hearing. A bailiff, after identifying that all parties to a matter are present, offers the option of mediating a matter prior to having a hearing. Volunteer mediators conduct mediations in conference and jury rooms. Consent judgments or voluntary dismissals are entered for matters in which agreements are reached. Cases not resulting in agreement continue to hearing.

Benefits include parties having reached their own resolution of the matter without requiring a judicial determination and reduced hearings held before a judge. Surveys indicate that parties keep their agreements in a high percentage of cases, and user satisfaction rates run very high. An evaluation by the Michigan State University Department of Communication found that parties deriving a judgment through mediation were more likely to collect all of the judgment, in a shorter period of time, than parties who obtained a judgment without mediation.

Off-Site Mediation

Because of the challenges posed by having volunteer mediators standing by in numerous district courts on hearing days, most CDRP centers prefer to have a referral

protocol with courts that permits mediation to take place at the CDRP center. Much the same applies as the courthouse practice described above, except that a CDRP center receives a notice from the court and contacts parties prior to the scheduled hearing date. Either by mail or telephone contact, center staff invite parties to attend mediation at the center or other neutral location. Mediators help parties complete either consent judgments or voluntary dismissals upon resolution. Matters not resulting in agreements proceed to hearing.

Off-site mediation generally affords parties more flexibility in scheduling a meeting time, reduces stress often accompanied with court, and permits more time to pursue resolution options.

General Civil

An increasing number of district courts are referring general civil cases, particularly where one or both parties are unrepresented by counsel.

Summary Landlord/Tenant Proceedings

Through mediation, landlords and tenants either resolve payment issues or determine a mutually acceptable date of moving out of the rented facility. In some cases, third parties that provide emergency assistance have provided tenants with funds to either remain in their rented space, or to transition elsewhere.

Conclusion

Courts and CDRP centers are increasingly collaborating to determine how mediation may best provide citizens with an alternative to the traditional adversarial process. Courts, attorneys, and other justice system constituents are encouraged to directly contact their local CDRP center to learn more about the services offered, and to develop new services that best address local needs.

Office of Dispute Resolution Website: <http://courts.michigan.gov/scao/dispute/odr.htm>
